

1 ANTHONY J. IOZZO (NY Bar 5402649)
 2 Trial Attorney, Tax Division
 3 U.S. Department of Justice
 4 P.O. Box 683
 5 Washington, D.C. 20044
 Telephone: (202) 215-6297
 Facsimile: (202) 307-0054
 Anthony.Iozzo@usdoj.gov
 Western.Taxcivil@tax.usdoj.gov
Counsel for United States of America

6
UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

8
 9 MICHAEL DIELEMAN and ROBERT
 DIELEMAN, as Executors for the Estate of
 Roger Dieleman,

10 Plaintiffs,

11 v.

12 JOHN CUMMINGS, an individual;
 13 GRETCHEN SMOLKA, an individual;
 MARK PEPLOWSKI, an individual; the
 14 UNITED STATES OF AMERICA; DOES I
 through X; and ROE ENTITIES I through X.

15 Defendants.

16 UNITED STATES OF AMERICA,
 Counter- and Crossclaim Plaintiff,
 17 v.

18 MICHAEL DIELEMAN and ROBERT
 DIELEMAN, as Executors for the Estate of Roger
 19 Dieleman; CLARK COUNTY, NEVADA,
 Counter Claim Defendants,
 20 GRETCHEN SMOLKA
 Counter- and Crossclaim Defendant.

Case No. 2:21-cv-01708-JCM-EJY

**UNOPPOSED MOTION FOR LEAVE
 OF COURT TO SERVE
 CROSSCLAIM DEFENDANT**

FIRST REQUEST

21 Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure and LR IA 6-1, the United

22 States respectfully requests that this Court grant the United States leave of Court to serve its

1 Answer, Counterclaim, and Crossclaim on Defendant Gretchen Smolka within 90 days of an
2 Order entered by this Court.

3 Plaintiffs Michael and Robert Dieleman do not oppose this Motion. Defendant Smolka
4 has not appeared in this action since it was removed to this Court. On February 19, 2025, counsel
5 for the United States emailed Defendant Smolka's former counsel out of an abundance of caution
6 and they confirmed that they do not represent Defendant Smolka in the current action. On
7 February 19, 2025, counsel for the United States also emailed and called Defendant Smolka but
8 she has not responded as of the filing of this motion.

9 The United States also requests that the Clerk issue a summons for service on Defendant
10 Smolka, and a draft summons is submitted with this Motion.

11 This is the first such request.

12 Dated: February 21, 2025

13 Respectfully submitted,

14 /s/ Anthony J. Iozzo
15 ANTHONY J. IOZZO
16 Trial Attorney, Tax Division
17 U.S. Department of Justice

18
19
20
21
22
23
24 *Counsel for United States of America*

1 ANTHONY J. IOZZO (NY Bar 5402649)
 2 Trial Attorney, Tax Division
 3 U.S. Department of Justice
 4 P.O. Box 683
 5 Washington, D.C. 20044
 Telephone: (202) 215-6297
 Facsimile: (202) 307-0054
 Anthony.Iozzo@usdoj.gov
 Western.Taxcivil@tax.usdoj.gov
Counsel for United States of America

6

7 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

8

9 MICHAEL DIELEMAN and ROBERT
 DIELEMAN, as Executors for the Estate of
 Roger Dieleman,

10 Plaintiffs,

11 v.

12 JOHN CUMMINGS, an individual;
 13 GRETCHEN SMOLKA, an individual;
 MARK PEPLOWSKI, an individual; the
 14 UNITED STATES OF AMERICA; DOES I
 through X; and ROE ENTITIES I through X.

15 Defendants.

16 UNITED STATES OF AMERICA,
 Counter- and Crossclaim Plaintiff,
 17 v.

18 MICHAEL DIELEMAN and ROBERT
 DIELEMAN, as Executors for the Estate of Roger
 Dieleman; CLARK COUNTY, NEVADA,
 Counter Claim Defendants,
 19 GRETCHEN SMOLKA
 Counter- and Crossclaim Defendant.

20 Case No. 2:21-cv-01708-JCM-EJY

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

48

49

50

51

52

53

54

55

56

57

58

59

60

61

62

63

64

65

66

67

68

69

70

71

72

73

74

75

76

77

78

79

80

81

82

83

84

85

86

87

88

89

90

91

92

93

94

95

96

97

98

99

100

101

102

103

104

105

106

107

108

109

110

111

112

113

114

115

116

117

118

119

120

121

122

123

124

125

126

127

128

129

130

131

132

133

134

135

136

137

138

139

140

141

142

143

144

145

146

147

148

149

150

151

152

153

154

155

156

157

158

159

160

161

162

163

164

165

166

167

168

169

170

171

172

173

174

175

176

177

178

179

180

181

182

183

184

185

186

187

188

189

190

191

192

193

194

195

196

197

198

199

200

201

202

203

204

205

206

207

208

209

210

211

212

213

214

215

216

217

218

219

220

221

222

223

224

225

226

227

228

229

230

231

232

233

234

235

236

237

238

239

240

241

242

243

244

245

246

247

248

249

250

251

252

253

254

255

256

257

258

259

260

261

262

263

264

265

266

267

268

269

270

271

272

273

274

275

276

277

278

279

280

281

282

283

284

285

286

287

288

289

290

291

292

293

294

295

296

297

298

299

300

301

302

303

304

305

306

307

308

309

310

311

312

313

314

315

316

317

318

319

320

321

322

323

324

325

326

327

328

329

330

331

332

333

334

335

336

337

338

339

340

341

342

343

344

345

346

347

348

349

350

351

352

353

354

355

356

357

358

359

360

361

362

363

364

365

366

367

368

369

370

371

372

373

374

375

376

377

378

379

380

381

382

383

384

385

386

387

388

389

390

391

392

393

394

395

396

397

398

399

400

401

402

403

404

405

406

407

408

409

410

411

412

413

414

415

416

417

418

419

420

421

422

423

424

425

426

427

428

429

430

431

432

433

434

435

436

437

438

439

440

441

442

443

444

445

446

447

448

449

450

451

452

453

454

455

456

457

458

459

460

461

462

463

464

465

466

467

468

469

470

471

472

473

474

475

476

477

478

479

480

481

482

483

484

485

486

487

488

489

490

491

492

493

494

495

496

497

498

499

500

501

502

503

504

505

506

507

508

509

510

511

512

513

514

515

516

517

518

519

520

521

522

523

524

525

526

527

528

529

530

531

532

533

534

535

536

537

538

539

540

541

542

543

544

545

546

547

548

549

550

551

552

553

554

555

556

557

558

559

560

561

562

563

564

565

566

567

568

569

570

571

572

573

574

575

576

577

578

579

580

581

582

583

584

585

586

587

588

589

590

591

592

593

594

595

596

597

598

599

600

601

602

603

604

605

606

607

608

609

610

611

612

613

614

615

616

617

618

619

620

621

622

623

624

625

626

627

628

629

630

631

632

633

634

635

636

637

638

639

640

641

642

643

644

645

646

647

648

649

650

651

652

653

654

655

656

657

658

659

660

661

662

663

664

665

666

667

668

669

670

671

672

673

674

675

676

677

678

679

680

681

682

683

684

685

686

687

688

689

690

691

692

693

694

695

696

697

698

699

700

701

702

703

704

705

706

707

708

709

710

711

712

713

714

715

716

717

718

719

720

721

722

723

724

725

726

727

728

729

730

731

732

733

734

735

736

737

738

739

740

741

742

743

744

745

746

747

748

749

750

751

752

753

754

755

756

757

758

759

760

761

762

763

764

765

766

767

768

769

770

771

772

773

774

775

776

777

778

779

780

781

782

783

784

785

786

787

788

789

790

791

792

793

794

795

796

797

798

799

800

801

802

803

804

805

806

807

808

809

810

811

812

813

814

815

816

817

818

819

820

821

822

823

824

825

826

827

828

829

830

831

832

833

834

835

836

837

838

839

840

841

842

843

844

845

846

847

848

849

850

851

852

853

854

855

856

857

858

859

860

861

862

863

864

865

866

867

868

869

870

871

872

873

874

875

876

877

878

879

880

881

882

883

884

885

886

887

888

889

890

891

892

893

894

895

896

897

898

899

900

901

902

903

904

905

906

907

908

909

910

911

912

913

914

915

916

917

918

919

920

921

922

923

924

925

926

927

928

929

930

931

932

933

934

935

936

937

938

939

940

941

942

943

944

945

946

947

948

949

950

951

952

953

954

955

956

957

958

959

960

961

962

963

964

965

966

967

968

969

970

971

972

973

974

975

976

977

978

979

980

981

982

983

984

985

986

987

988

989

990

991

992

993

994

995

996

997

998

999

1000

1001

1002

1003

1004

1005

1006

1007

1008

1009

1010

1011

1012

1013

1014

1015

1016

1017

1018

1019

1020

1021

1022

1023

1024

1025

1026

1027

1028

1029

1030

1031

1032

1033

1034

1035

1036

1037

1038

1039

1040

1041

1042

1043

1044

1045

1046

1047

1048

1049

1050

1051

1052

1053

1054

1055

1056

1057

1058

1059

1060

1061

1062

1063

1064

1065

1066

1067

1068

1069

1070

1071

1072

1073

1074

1075

1076

1077

1078

1079

1080

1081

1082

1083

1084

1085

1086

1087

1088

1089

1090

1091

1092

1093

1094

1095

1096

1097

1098

1099

1100

1101

1102

1103

1104

1105

1106

1107

1108

1109

1110

1111

1112

1113

1114

1115

1116

1117

1118

1119

1120

1121

1122

1123

1124

1125

1126

1127

1128

1129

1130

1131

1132

1133

1134

1135

1136

1137

1138

1139

1140

1141

1142

1143

1144

1145

1146

1147

1148

1149

1150

1151

1152

1153

1154

1155

1156

1157

1158

1159

1160

1161

1162

1163

1164

1165

1166

1167

1168

1169

1170

1171

1172

1173

1174

1175

1176

1177

1178

1179

1180

1181

1182

1183

1184

1185

1186

1187

1188

1189

1190

1191

1192

1193

1194

1195

1196

1197

1198

1199

1200

1201

1202

1203

1204

1205

1206

1207

1208

1209

1210

1211

1212

1213

1214

1215

1216

1217

1218

1219

1220

1221

1222

1223

1224

1225

1226

1227

1228

1229

1230

1231

1232

1233

1234

1235

1236

1237

1238

1239

1240

1241

1242

1243

1244

1245

1246

1247

1248

1249

1250

1251

1252

1253

1254

1255

1256

1257

1258

1259

1260

1261

1262

1263

1264

1265

1266

1267

1268

1269

1270

1271

1272

1273

1274

1275

1276

1277

1278

1279

1280

1281

1282

1283

1284

1285

1286

1287

1288

1289

1290

1291

1292

1293

1294

1295

1296

1297

1298

1299

1300

1301

1302

1303

1304

1305

1306

1307

1308

1309

FACTUAL BACKGROUND

On July 16, 2018, Plaintiff Roger Dieleman filed a complaint in the Eighth Judicial District Court in Clark County, Nevada seeking to quiet title to two properties located in Las Vegas, Nevada. *See Estate of Roger Dieleman v. Mark Peplowski*, Case No. A-18-777754-C. On or about July 23, 2018, Defendants Gretchen Smolka and John Cummings, a married couple, were served with process in the State Court quiet title action, and neither filed a responsive pleading within the requisite time. ECF No. 21 at 11. The State Court Clerk entered default on or about August 24, 2018 and the State Court issued a default judgment against Defendants Smolka and Cummings on or about December 10, 2018. *Id.* On January 11, 2019, Defendants Smolka and Cummings filed a motion to aside the default judgment, which the State Court granted on March 15, 2019. ECF No. 21 at 11-12.

Plaintiff Roger Dieleman passed away on May 17, 2019 and the executors of his estate, Michael and Robert Dieleman, were substituted as parties in the State Court quiet title action. ECF No. 21 at 5 & 11. Defendant John Cummings passed away on April 20, 2020 and Defendant Smolka was appointed as the Personal Representative of his Estate, and a separate probate action was instituted in State court. ECF No. 21 at 6 & 15. On August 6, 2021, Plaintiffs Michael and Robert Dieleman filed their First Amended Complaint in the State quiet title action. ECF Nos. 1-2 at 3 & 21 at 6. On August 19, 2021, Defendant Smolka was personally served with the First Amended Complaint on behalf of herself and in her capacity as the Personal Representative of John Cummings's estate. ECF Nos. 9, 10, & 21 at 6.

The United States was named as a defendant in the First Amended Complaint in the State quiet title action because it possesses federal tax liens on the subject properties arising from joint federal income tax liabilities of Defendants Smolka and Cummings. ECF Nos. 1-2 & 12. On

1 September 16, 2021, the United States removed the State quiet title action to this Court pursuant
 2 to 28 U.S.C. §§ 1444 and 2410. ECF No. 1. The Certificate of Service for the United States'
 3 Notice of Removal indicates that service under Rule 5 was made on Defendant Smolka through
 4 first class mail. ECF No. 1 at 4. According to counsel for Plaintiffs Michael and Robert
 5 Dieleman, formal service under Rule 4 of their First Amended Complaint and the United States'
 6 Notice of Removal was attempted on four occasions. ECF No. 21 at 7. On or about May 23,
 7 2022, Defendant Smolka's former counsel notified the Plaintiffs' counsel that he spoke with
 8 Defendant Smolka about the action before this Court. *Id.* Further, on July 25, 2022, Defendant
 9 Smolka contacted a colleague of the Plaintiffs' counsel to discuss this action. *Id.*

10 Defendant Smolka did not file an answer or otherwise respond to either the original
 11 complaint or the First Amended Complaint either before or after removal. ECF No. 21 at 6-7. At
 12 the request of Plaintiffs Michael and Robert Dieleman, the Clerk of Court entered default against
 13 Defendant Smolka individually and in her capacity as the personal representative of John
 14 Cummings's estate on October 3, 2022. ECF No. 22. The Plaintiffs ultimately dismissed their
 15 claims against Defendant Smolka individually and in her capacity as the personal representative
 16 of John Cummings's estate before this Court under Federal Rule of Civil Procedure
 17 41(a)(1)(A)(i) pursuant to an agreement they reached with Defendant Smolka in the separate
 18 State probate action. ECF No. 33.

19 After the United States removed the State quiet title action to this Court, it filed an
 20 Answer, a Counterclaim against Plaintiffs Michael Dieleman, Robert Dieleman, Gretchen
 21 Smolka, and Clark County, and a Crossclaim against Defendant Smolka on November 22, 2021.
 22 ECF No. 12. The Certificate of Service for the United States' Answer, Counterclaim, and
 23 Crossclaim indicates that the United States electronically filed this pleading on the Court's e-

1 filing system, which provided notice to the counsel for Plaintiffs Michael and Robert Dieleman.
 2 ECF No. 12 at 25. In its Crossclaim, the United States is seeking to reduce to judgment its
 3 federal tax liens against Defendant Smolka arising from joint federal income tax liabilities of
 4 Defendants Smolka and Cummings. ECF No. 12. The United States and Plaintiffs Michael and
 5 Robert Dieleman have reached a settlement agreement which will dispose of the United States'
 6 claims against the Dielemans and Clark County, ECF No. 34, and this agreement will be
 7 addressed in a subsequent filing.¹

8 The United States did not formally serve its Answer, Counterclaim, and Crossclaim on
 9 Defendant Smolka pursuant to Rule 4 of the Federal Rules of Civil Procedure, and now seeks
 10 leave of Court to attempt such service. Counsel for the United States believes that the United
 11 States mailed Defendant Smolka the pleading pursuant to Rule 5 despite the omission of
 12 Defendant Smolka's address on the Certificate of Service. Declaration of Alexander E. Stevko,
 13 ¶ 5. Counsel for the United States mistakenly believed that service under Rule 5 was the
 14 operative rule governing service on Defendant Smolka because she was not formally in default
 15 after the State Court set aside the prior default judgment. *Id.* at ¶ 6. The United States now
 16 recognizes this error and believes that formal service is required before it can advance its claims
 17 against Defendant Smolka in this action. To date, Defendant Smolka has not filed an answer or
 18 otherwise responded to the United States' Counterclaim and Crossclaim.

19
 20
 21
 22
 23
 24¹ The United States was also seeking to foreclose the tax liens on the subject properties that they encumber, but the
 agreement with Plaintiffs Michael and Robert Dieleman will dispose of this claim.

ARGUMENT

I. Defendant Smolka is a party in default for failing to appear under Rule 5(a)(2).

Rule 5 of the Federal Rules of Civil Procedure governs service of pleadings filed after the original complaint and permits service by various means, including by mailing a copy to a party's last known address. Fed. R. Civ. P. 5(b)(2)(C). However, Rule 5(a)(2) requires a pleading asserting a new claim against a party to be served in the manner prescribed under Rule 4 if that party is in default for failing to appear. A court need not have adjudicated a party as being in default to trigger Rule 5(a)(2)'s applicability. *Varnes v. Glass Bottle Blowers Asso.*, 674 F.2d 1365, 1368 n.3 (11th Cir. 1982). For purposes of Rule 5(a)(2), a party who has failed to appear in the action is a party "in default for failing to appear." *Cutting v. Town of Allenstown*, 936 F.2d 18, 21 n.1 (1st Cir. 1991) (citing *Varnes*, 674 F.2d at 1368 n.3); *See also Employee Painters; Trust v. Ethan Enters.*, 480 F.3d 993, 999 (9th Cir. 2007) (finding amended complaint with new claims was properly served under Rule 5 where defendants not in default because they had actively participated in the litigation by filing an answer to the original complaint and contesting a disputed counterclaim).

Here, Defendant Smolka may be considered a party “in default for failing to appear” in this action. Before the United States removed the State quiet title action to this Court, the State Court had issued a default judgment against Defendants Smolka and Cummings on December 10, 2018. Although that default judgment was set aside on March 15, 2019, Defendant Smolka did not subsequently respond to either the original complaint or the First Amended Complaint despite being properly served with each. Defendant Smolka has not appeared in this action since moving to set aside the default judgment in the State quiet title action, either before or after removal. Plaintiffs Michael and Robert Dieleman requested that the Clerk of Court enter default

1 against Defendant Smolka, and default was entered on October 3, 2022. The United States has
 2 not yet requested the entry of default against Defendant Smolka with respect to its claims, but
 3 Defendant Smolka may properly be considered a party “in default for failing to appear.”
 4 Accordingly, the United States is required to serve its Answer, Counterclaim, and Crossclaim on
 5 Defendant Smolka in the manner prescribed by Rule 4 pursuant to Rule 5(a)(2).

6 **II. The United States demonstrates good cause and excusable neglect under Rule 4(m).**

7 Under Rule 4(m), a plaintiff must serve a defendant within 90 days after the pleading is
 8 filed and failure to do so is cause for dismissal without prejudice. Fed. R. Civ. P. 4(m). However,
 9 if a plaintiff shows good cause for the failure, the court must extend the time for service for an
 10 appropriate period. *Id.*; *Efaw v. Williams*, 473 F.3d 1038, 1040 (9th Cir. 2007). The Ninth Circuit
 11 has directed district courts to consider the following factors when determining whether Rule
 12 4(m)’s good cause requirement has been satisfied: (1) whether the party to be served received
 13 actual notice of the lawsuit, (2) the degree of prejudice to the defendant caused by the delay, and
 14 (3) whether the plaintiff would be severely prejudiced by the dismissal of the complaint. *In re*
 15 *Sheehan*, 253 F.3d 507, 512 (9th Cir. 2001); *See Lemoge v. United States*, 587 F.3d 1188, 1196
 16 (holding that prejudice to a plaintiff caused by dismissal pursuant to Rule 4(m) is acute when the
 17 statute of limitations would preclude the plaintiff from re-filing the case).

18 Even absent a showing of good cause, courts have broad discretion to extend the time for
 19 service under Rule 4(m). *Efaw*, 473 F.3d at 1041. A court may discretionarily extend time for
 20 service upon a showing of excusable neglect. *Lemoge*, 587 F.3d at 1198. Excusable neglect
 21 encompasses situations in which the failure to comply with a deadline is attributable to
 22 negligence, and includes omissions caused by carelessness. *Id.* at 1192 (citing *Pioneer Inv. Servs.*
 23 *Co v. Brunswick Assocs. Ltd.*, 507 U.S. 380, 394 (1993)). When determining whether neglect is

1 excusable, the court must consider: (1) the danger of prejudice to the opposing party, (2) the
 2 length of the delay and its potential impact on the proceedings, (3) the reason for the delay, and
 3 (4) whether the movant acted in good faith. *Id.*

4 The court may grant an extension of time for service even after the 90-day period has
 5 expired. *Mann v. American Airlines*, 324 F.3d 1088, 1090 (9th Cir. 2003); *See Smith v.*
 6 *Marksman Sec. Corp.*, 2024 U.S. Dist. LEXIS 200605, 2024 WL 4682280 (D. Nev. Nov. 4,
 7 2024) (discretionarily extending time for service after deadline expired where plaintiff would
 8 suffer prejudice because statute of limitations for the case had expired); *But see Efaw*, 473 F.3d
 9 at 1041 (vacating district court's judgment with instructions to dismiss case where plaintiff
 10 waited seven years to serve defendant, there was no evidence that defendant knew of the action,
 11 and the delay prejudiced the defendant due to loss of witnesses).

12 Here, the United States' failure to serve Defendant Smolka was an omission for which
 13 there is good cause to remedy through an extension of time for the United States to attempt
 14 service of its Answer, Counterclaim, and Crossclaim on Defendant Smolka. The *Sheehan* factors
 15 that courts consider when determining Rule 4(m)'s good cause requirement are each satisfied.

16 First, it appears that Defendant Smolka has notice of the lawsuit. While it is unclear
 17 whether she is aware of the United States' specific claims against her, she is aware of the broader
 18 action. While this action was in State Court, Defendant Smolka filed a motion to aside the
 19 default judgment against her, which that court granted. After the action was removed to this
 20 Court, Defendant Smolka's former counsel discussed this action with her, and Defendant Smolka
 21 herself reached out to a colleague of the Plaintiffs' counsel.

22 Second, Defendant Smolka has not suffered any prejudice due to the delay in service.
 23 Defendant Smolka's tax liabilities are outstanding and accruing interest, but this is due to

1 Defendant Smolka's failure to pay and not the United States' failure to serve its claim to reduce
 2 the liabilities to judgment. Additionally, Plaintiffs Michael and Robert Dieleman are not
 3 prejudiced because they have negotiated a settlement agreement with the United States and
 4 dismissed their claims against Defendant Smolka.

5 Finally, the United States would be severely prejudiced should the complaint be
 6 dismissed without prejudice because the statute of limitations on collection for certain tax years
 7 would preclude the United States from refiling claims for those years. Specifically, the statutes of
 8 limitations for tax years 2010 through 2013, worth approximately \$181,836.70 at the time the
 9 United States' crossclaim was filed, would all be expired if the United States were forced to
 10 refile its claims now. Balancing the potential prejudicial impact on the parties, the Court should
 11 determine that the likelihood of severe prejudice to the United States outweighs any remote
 12 prejudicial impact on Defendant Smolka should the Court dismiss this action in lieu of granting
 13 leave for service. Accordingly, there is good cause for this Court to extend the United States'
 14 time to serve Defendant Smolka.

15 Even if the Court finds that the United States has not demonstrated good cause, the Court
 16 should exercise its broad discretion under Rule 4(m) to extend the time for the United States to
 17 serve Defendant Smolka. The *Lemoge* factors that courts consider when determining Rule 4(m)'s
 18 excusable neglect standard are each satisfied. First, Defendant Smolka has not suffered any
 19 prejudice for the reason articulated above.

20 Second, though there has been a delay from the time the United States filed its crossclaim
 21 against Defendant Smolka to now, there is little impact on the broader action. As mentioned, the
 22 United States and Plaintiffs Michael and Robert Dieleman have negotiated a settlement
 23 agreement which will dispose of the United States' claims against the Dielemans and Clark

1 County, and Plaintiffs Michael and Robert Dieleman have dismissed their claims against
 2 Defendant Smolka. The only remaining claims at issue are those of the United States against
 3 Defendant Smolka.

4 Third, the reason for the United States' delay in serving Defendant Smolka was counsel's
 5 mistaken belief that Rule 5 was the operative rule governing service because she was not
 6 formally in default after the State Court set aside the prior default judgment. The United States
 7 was previously focused on resolving its claims against Plaintiffs Michael and Robert Dieleman
 8 and identified the service error when preparing to seek a default judgment against Defendant
 9 Smolka. Declaration of Alexander E. Stevko ¶ 7. Thus, the United States' delay in serving
 10 Defendant Smolka "resulted from negligence and...not from deviousness or willfulness."

11 *Bateman v. United States Postal Serv.*, 231 F.3d 1220, 1225 (9th Cir. 2000).

12 Finally, the United States is, in good faith, exercising its duty of candor to the Court in
 13 notifying the Court of this error on its own, and respectfully requesting a remedy by way of
 14 additional time to serve Defendant Smolka. Even though the 90-day period has long expired, the
 15 Court may reasonably exercise its discretion and allow the United States this additional time.

16 //
 17 //
 18
 19 //
 20
 21 //
 22
 23 //
 24

CONCLUSION

The United States respectfully requests leave of this Court to serve Defendant Smolka with its Answer, Counterclaim, and Crossclaim pursuant to Rule 4(m) of the Federal Rules of Civil Procedure within 90 days of an Order entered by this Court.

Dated: February 21, 2025

Respectfully submitted,

/s/ Anthony J. Iozzo
ANTHONY J. IOZZO
Trial Attorney, Tax Division
U.S. Department of Justice
Counsel for United States of America

Good cause appearing, IT IS SO ORDERED.

Payna J. Zouchah
UNITED STATES MAGISTRATE JUDGE

DATED: February 21, 2025